

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

STATE OF IOWA ex rel.
THOMAS J. MILLER,
ATTORNEY GENERAL OF IOWA,
99AG25112

Plaintiff,

v.

GALAXY GADGETS AND GIZMOS, LLC,
a Florida corporation dba
Galaxy Member Benefits; and

JOHN E. BARTHOLOMEW, JR.,
in his individual and corporate capacities,

Defendants.

Equity No. CE 59174

PETITION IN EQUITY

FILED
POLK COUNTY IOWA
08 MAY 19 PM 1:36
IOWA DISTRICT COURT

The State of Iowa ex rel. Attorney General Thomas J. Miller, through Assistant Attorney General Steve St. Clair, states as follows for its causes of action against the above-named Defendants. References to "Galaxy" or "Defendants" shall be interpreted to include Galaxy Gadgets And Gizmos, LLC, Galaxy Member Benefits, and John E. Bartholomew, Jr., unless the context otherwise requires.

INTRODUCTION

1. Galaxy Gadgets And Gizmos, LLC of Palm Harbor, Florida, dba Galaxy Member Benefits, sells memberships that supposedly entitle consumers to discounts on various electronic items and other consumer goods and services. Galaxy sells its memberships to Iowans through telemarketing and mail. However, in marketing its memberships Galaxy has not complied with Iowa's Buying Club Memberships Act, which requires that consumers receive important written

disclosures and be given the opportunity to sign a written contract before being obligated to pay membership fees. In addition, Iowans have reported that Galaxy has made unauthorized withdrawals from their bank accounts, or made unauthorized charges to their credit cards, sometimes more than once and in amounts totaling more than \$300. Iowans have also reported that Galaxy representatives have misled them about government grants being available to consumers who make a payment to Galaxy. Consumers who were victimized have been frustrated in their efforts to contact Galaxy and set things right; Galaxy representatives have told them that nothing could be done about unauthorized charges or other problems. It appears to the Attorney General that Galaxy is committing consumer fraud against Iowans, should be enjoined from continuing to do so, and should be ordered to reimburse Iowans for their losses and pay substantial civil penalties.

VENUE

2. Venue is proper in Polk County, Iowa, because Defendants have engaged and, upon information and belief, continue to engage in the activities that are the subject of this Petition in Polk County, Iowa. Moreover, upon information and belief Defendants do business in Polk County and one or more victims of the practices in question reside in Polk County. Iowa Code § 714.16 (10).

PARTIES

3. The Iowa Attorney General is authorized to bring this action on behalf of the State of Iowa by Iowa Code §§ 714.16 (7) and 714.16A (1).

4. Galaxy Gadgets And Gizmos, LLC is a Florida corporation. The company has done business as, and marketed memberships to Iowa residents as, Galaxy Member Benefits. The

website of Galaxy Gadgets And Gizmos LLC promotes Galaxy Member Benefits, and gives a Palm Harbor, Florida address that is the same address used by Galaxy Member Benefits.

5. John E. Bartholomew, Jr. ("Mr. Bartholomew") is a Florida resident, and is listed in records of the Florida Secretary of State as an officer/registered agent of Galaxy Gadgets And Gizmos, LLC.

JURISDICTION

6. Iowa's Buying Club Memberships law, Iowa Code Ch. 552A ("the Buying Club Law") provides in pertinent part:¹

552A.1 Definitions

As used in this chapter, unless the context otherwise requires:

1. "*Buying club*" means a corporation, partnership, unincorporated association, or other business enterprise which sells or offers for sale to the public generally memberships or certificates of membership.
2. "*Contract*" means the agreement by which a person acquires a membership in a buying club.
3. "*Membership*" means certificates, memberships, shares, bonds, contracts, stocks, or agreements of any kind or character issued upon any plan offered generally to the public entitling the holder to purchase merchandise, materials, equipment, or service, either from the issuer or another person designated by the issuer, either under a franchise or otherwise, whether it be at a discount, at cost plus a percentage, at cost plus a fixed amount, at a fixed price, or on any other similar basis.

552A.3 Right of cancellation - requirement of writing.

The requirements of sections 555A.1 through 555A.5, relating to door-to-door sales, shall apply to sales of buying club memberships, irrespective of the place or manner of sale or the purpose for which they are purchased. In addition to the requirements of chapter 555A, a contract shall not be enforceable against a person acquiring a membership in a buying club unless the contract is in writing and signed by the purchaser.

552A.4 Limitation on membership period.

A contract shall not be valid for a term longer than eighteen months from the date on which the contract is signed. However, a buying club may allow a member to convert the

¹ Portions of statutes highlighted in italics or bold in this Petition are highlighted in the same manner in the Code of Iowa.

contract into a contract for a period longer than eighteen months after the member has been a member of the club for at least one year. The duration of the contract shall be clearly and conspicuously disclosed in the contract in boldface type of a minimum size of the fourteen points.

552A.5 Remedies

1. A violation of this chapter is a violation of section 714.16, subsection 2, paragraph "a".

2. The rights, obligations, and remedies provided in this chapter shall be in addition to any other rights, obligations, or remedies provided by law or in equity. ...

7. In addition, Iowa Code § 552A.2 sets forth a list of exemptions from application of the Buying Club Law, but Plaintiff alleges that none serves to exempt the conduct alleged herein.

8. As noted in paragraph 6 above, the Buying Club Law incorporates various substantive requirements of the Door To Door Sales Act, namely Iowa Code §§ 555A.1 through 555A.5, with the proviso that such requirements apply "irrespective of the place or manner of sale or the purpose for which they are purchased." The Door To Door Sales Act provides in pertinent part:

555A.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. "*Business day*" means any calendar day except Saturday, Sunday, or public holiday, including holidays observed on Mondays.

2. "*Consumer goods or services*" means goods or services purchased, leased, or rented primarily for personal, family, or household purposes, including courses of instruction or training regardless of the purpose for which they are taken.

3. a. "*Door-to-door sale*" means a sale, lease, or rental of consumer goods or services with a purchase price of twenty-five dollars or more, whether under single or multiple contracts, in which the seller or the seller's representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller. Door-to-door sale does not include a transaction:

(1) Made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis.

- (2) In which the consumer is accorded the right of rescission by the provisions of the Consumer Credit Protection Act, 15 U.S.C. § 1635, or rules issued pursuant to this chapter.
 - (3) In which the buyer has initiated the contact and the goods or services are needed to meet a bona fide immediate personal emergency of the buyer, and the buyer furnishes the seller with a separate dated and signed personal statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within three business days.
 - (4) Conducted and consummated entirely by mail or telephone, and without any other contact between the buyer and the seller or its representative prior to delivery of the goods or performance of the services.
 - (5) In which the buyer has initiated the contact and specifically requested the seller to visit the buyer's home for the purpose of repairing or performing maintenance upon the buyer's personal property. If in the course of such a visit, the seller sells the buyer the right to receive additional services or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of those additional goods or services would not fall within this exclusion.
 - (6) Pertaining to the sale or rental of real property, to the sale of insurance and prepaid health service plans, or to the sale of securities or commodities by a broker-dealer registered with the securities and exchange commission.
- b. *"Door-to-door sale"*, irrespective of the place or manner of sale, also means the following:
- (1) A sale of funeral services or funeral merchandise regulated under chapter 523A.
 - (2) A sale of a social referral service or an ancillary service. For purposes of this subparagraph, "social referral service" means a service for a fee providing matching or introduction of individuals for the purpose of dating, matrimony, or general social contact not otherwise prohibited by law, and "ancillary service" means goods or services directly or indirectly related to or to be provided in connection with a social referral service.
4. *"Place of business"* means the main or permanent branch office or local address of a seller.
 5. *"Purchase price"* means the total price paid or to be paid for the consumer goods or services, including all interest and service charges.
 6. *"Seller"* means any person engaged in the door-to-door sale of

consumer goods or services.

555A.2 Contract.

Every seller shall furnish the buyer with a fully completed receipt or copy of any contract pertaining to a door-to-door sale at the time of its execution, which is in the same language as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in boldface type of a minimum size of ten points, a statement in substantially the following form:

You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right.

555A.3 Cancellation.

Every seller shall furnish each buyer, at the time the buyer signs the door-to-door sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "Notice of Cancellation", which shall be attached to the contract or receipt and easily detachable, and which shall contain in ten point boldface type the following information and statements in the same language as that used in the contract:

NOTICE OF CANCELLATION

.....
(enter date of transaction)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within ten business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do not agree to return the goods to the seller or if the

seller does not pick them up within twenty days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram, to, (Name of seller) at (Address of seller's place of business) not later than midnight of (Date).

I hereby cancel this transaction.

.....

(Date)

.....

(Buyer's signature)

555A.4 Duties of seller.

A seller shall:

1. Furnish two copies of the notice of cancellation to the buyer, and complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.
2. Not include in any contract or receipt any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this chapter including specifically the right to cancel the sale in accordance with the provisions of this chapter.
3. Inform each buyer orally, at the time the buyer signs the contract or purchases the goods or services, of the buyer's right to cancel.
4. Not misrepresent in any manner the buyer's right to cancel.
5. Honor any valid notice of cancellation by a buyer and within ten business days after the receipt of notice shall refund all payments made under the contract or sale, return any goods or property traded in, in substantially as good condition as when received by the seller, and cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.
6. Not negotiate, transfer, sell, or assign any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the seventh business day following the day the contract was signed or the goods or services were purchased.
7. Within ten business days of receipt of the buyer's notice of

cancellation notify the buyer whether the seller intends to repossess or to abandon any shipped or delivered goods.

555A.5 Effect on indebtedness.

Rescission of any contract pursuant to this chapter or the failure to provide a copy of the contract to the buyer as required by this chapter shall void any contract, note, instrument, or other evidence of indebtedness executed or entered into in connection with the contract and shall constitute a complete defense in any action based on the contract, note, instrument or other evidence of indebtedness brought by the seller, the seller's successors or assigns unless a successor or assignee of the seller after the seventh business day following the day the contract was signed has detrimentally relied upon a representation of the buyer that the contract has not been rescinded. This section shall not affect the rights of holders in due course of checks made by the buyer.

9. As noted above, the Buying Club Law provides that a violation of Iowa Code

Ch. 552A is a violation of Iowa Code § 714.16 (2)(a) of the Iowa Consumer Fraud Act, which provides in pertinent part:

The act, use or employment by a person of an unfair practice, deception, fraud, false pretense, false promise, or misrepresentation, or the concealment, suppression or omission of a material fact with intent that others rely upon the concealment, suppression, or omission, in connection with the lease, sale, or advertisement of any merchandise or the solicitation of contributions for charitable purposes, whether or not a person has in fact been misled, deceived, or damaged, is an unlawful practice.

10. A violation of Iowa Code § 714.16 (2)(a) is expressly declared to be an unlawful practice under the Consumer Fraud Act, which gives rise to certain enforcement options and penalties under Iowa Code §§ 714.16 (7). That latter subsection provides, in pertinent part:

... If it appears to the attorney general that a person has engaged in, is engaging in, or is about to engage in a practice declared to be unlawful by this section, the attorney general may seek and obtain in an action in a district court a temporary restraining order, preliminary injunction, or permanent injunction prohibiting the person from continuing the practice or engaging in the practice or doing an act in furtherance of the practice. The court may make orders or judgments as necessary to prevent the use or employment by a person of any prohibited practices, or which are necessary to restore to any person in

interest any moneys ... which have been acquired by means of a practice declared to be unlawful by this section ...

In addition to the remedies otherwise provided for in this subsection, the attorney general may request and the court may impose a civil penalty not to exceed forty thousand dollars per violation against a person found by the court to have engaged in a method, act, or practice declared unlawful under this section; provided, however, a course of conduct shall not be considered to be separate and different violations merely because the conduct is repeated to more than one person. In addition, on the motion of the attorney general or its own motion, the court may impose a civil penalty of not more than five thousand dollars for each day of intentional violation of a ... permanent injunction issued under authority of this section.

11. The remedies set forth in another section of the Iowa Code are triggered when a Consumer Fraud Act violation claims a victim 65 years of age or older. Iowa Code §§ 714.16A (1) & (3) (2005) provide, respectively:

If a person violates section 714.16, and the violation is committed against an older person, in an action by the attorney general, in addition to any other civil penalty, the court may impose an additional civil penalty not to exceed five thousand dollars for each such violation.

As used in this section, "*older person*" means a person who is sixty-five years of age or older.

FACTUAL ALLEGATIONS

12. Galaxy markets a range of consumer electronics and other merchandise to Iowa residents through a membership arrangement that purportedly entitles members to receive discounts and other benefits. Upon information and belief, Galaxy has used third party telemarketers to perform at least some such marketing, and Galaxy is responsible for the activities of those telemarketing agents.

13. Iowans have received telemarketing calls from Galaxy representatives offering such inducements as free gasoline (e.g., \$100 worth) to accept a Galaxy membership. Such calls were

followed by unauthorized charges to the consumers' bank accounts or credit cards. Such unauthorized charges were sometimes recurring, with single charges sometimes in the range of \$299.

14. Iowans have received telemarketing calls from Galaxy representatives who claim that the consumer has qualified for and would promptly receive a government grant in a substantial dollar amount which would be deposited in the consumer's bank account. However, instead of receiving the promised grant, hundreds of dollars were extracted from the consumer's bank account without authorization.

15. Iowa residents have discovered upon reviewing their bank statements or receiving overdraft or other notices from their banks that automatic withdrawals had been made from their bank accounts by Galaxy. The withdrawals were in various amounts including \$19.95 and \$29.95, and were sometimes followed by a withdrawal of \$299.00. These withdrawals were purportedly related to fees for Galaxy's membership program, but Iowa residents have asserted that the withdrawals were unauthorized.

16. Iowa residents have discovered upon reviewing their credit card statements that charges had been made to their credit card accounts by Galaxy. The charges were in various amounts including \$19.95 and \$29.95, and were sometimes followed by a charge of \$299.00. These charges were purportedly related to fees for Galaxy's membership program, but Iowa residents have asserted that the charges were unauthorized.

17. Iowa consumers who discovered unauthorized withdrawals or charges and contacted Galaxy encountered various difficulties in their efforts to obtain refunds or otherwise rectify the situation, including long periods on hold, disconnections, claims that nothing could be done, and

rude and dismissive treatment.

18. Upon information and belief, John E. Bartholomew, Jr. controls the operations of Galaxy Gadgets and Gizmos, LLC and is responsible for the violations of law set forth herein.

19. The following incidents reported by Iowa consumers serve to illustrate the violative conduct for which Defendants are responsible:

a) In the last year a 63 year old woman from Primghar, Iowa received telephone calls from Galaxy representatives, but declined any and all offers presented. Nevertheless, she later received a letter indicating that more than \$100 had been withdrawn from her bank account by Galaxy. She phoned Galaxy repeatedly but was either disconnected or treated rudely. A promised refund was never received.

b) In 2007 a man from Council Bluffs discovered three unauthorized withdrawals from his bank account, in the approximate amounts of \$19, \$29, and \$299. He learned that he was being charged for a Galaxy "membership club." Working with his bank, he managed to reverse some, but not all, of the unauthorized charges.

c) A 74-year-old Clinton resident received a phone call last year from a Galaxy representative offering him free gasoline. He was asked to provide his credit card number, which he did, only to later discover unauthorized charges.

d) An Aplington resident received a call from a Galaxy representative informing him that he would be receiving a government grant in the amount of \$10,000. He was told that the grant would be deposited into his bank account. However, he was instructed to respond "yes" to a series of tape-recorded questions, one of which involved enrolling as a Galaxy member. On the first run-through he said "no" when one of the questions asked if he wished to be a Galaxy member, and so he was again instructed to respond only in the affirmative, and the series of questions was repeated. He later discovered an unauthorized withdrawal by Galaxy from his bank account in the approximate amount of \$240, which he managed to have reversed. He never received the promised government grant.

e) An 80-year-old Davenport man received a phone call about a year ago from a Galaxy representative offering discounts on restaurants, baseball games, and other activities. Although no membership fees were discussed, the consumer was asked to provide his bank account information as a "formality." He later discovered successive monthly withdrawals from his bank account, each of about \$60, none of which he had authorized.

f) A Hampton stroke victim in difficult financial circumstances went online to apply for various grants last year. She reports that she then received a letter from Galaxy indicating that she qualified for a grant, and also received a check for almost \$5,000. The woman promptly applied the check to various debts, only to learn too late that the check was counterfeit. Covering the charges that she has incurred as a result of cashing the fake check has made her difficult financial situation worse.

20. Upon information and belief, although Defendant has at all relevant times been subject to Iowa's Buying Club Law, Defendant has never complied with the requirements of Iowa Code §§ 555A.1 through 555A.5. In particular and without limitation, Defendant has never furnished buyers with a written document in compliance with Section 555A.2; has never furnished buyers the Notice of Cancellation forms required by Section 555A.3; and has never informed buyers orally of their right to cancel or performed the other duties of sellers set forth in Section 555A.4.

21. The acts and practices referred to herein relating to Galaxy's marketing of memberships and other solicitation activities directed at Iowa residents are deceptive and/or unfair practices in violation of section 714.16 (2)(a) of the Iowa Consumer Fraud Act, and otherwise violate that Act.

22. Neither all nor any part of the application for injunctive relief herein has been previously presented to and refused by any court or justice. Iowa R. Civ. P. 1.1504.

23. In an action by the state, no security shall be required of the state. Iowa R. Civ. P. 1.207.

COUNT I

VIOLATION OF THE BUYING CLUB MEMBERSHIPS ACT

24. Paragraphs 1 through 23 are incorporated herein by reference.

25. Defendants' marketing of memberships violates Iowa Code Chapter 552A.

26. Pursuant to Iowa Code § 552A.5 (1), a violation of the Buying Club Law is a violation of section 714.16 (2)(a) of the Iowa Consumer Fraud Act.

COUNT II

VIOLATION OF THE IOWA CONSUMER FRAUD ACT

27. Paragraphs 1 through 23 are incorporated herein by reference.

28. Defendants' acts and practices relating to the marketing of memberships and other solicitation activities directed at Iowans constitute unfair and/or deceptive practices in violation of section 714.16 (2)(a) of the Iowa Consumer Fraud Act, and otherwise violate that Act.

COUNT III

CONSUMER FRAUDS COMMITTED AGAINST OLDER PERSONS

29. Paragraphs 1 through 23 above are incorporated herein by reference.

30. A number of the Consumer Fraud Act violations for which Defendants are responsible were committed against older persons and give rise to the additional civil penalty provided for in section 714.16A.

PRAYER

Plaintiff prays the Court grant the following relief:

A. Pursuant to Iowa Code § 714.16 (7), and upon further request by Plaintiff addressed to the Court, enter a temporary restraining order and preliminary injunction restraining Defendants and (as applicable) Defendants' directors, officers, principals, partners, employees, agents, servants, representatives, subsidiaries, affiliates, successors, assigns, merged or acquired predecessors, parent or controlling entities, and all other persons, corporations and other entities

acting in concert or participating with Defendants who have actual or constructive notice of the Court's injunction, from engaging in the violations of law alleged in this Petition or from otherwise violating the Iowa Consumer Fraud Act.

B. Pursuant to Iowa Code § 714.16 (7), after trial on the merits, make permanent the above-described injunctions, expanding their provisions as necessary by including *inter alia* such "fencing in" provisions as are reasonably necessary to ensure that Defendants and other enjoined persons and entities do not return to the unlawful practices alleged herein, or commit comparable violations of law.

C. Pursuant to Iowa Code § 714.16 (7), enter judgment against Defendants, jointly and severally, for amounts necessary to restore to Iowa consumers all money acquired by means of acts or practices that violate the Consumer Fraud Act.

D. Pursuant to Iowa Code § 714.16 (7), enter judgment against Defendants, jointly and severally, for such additional funds as are necessary to ensure complete disgorgement of all ill-gotten gain traceable to the unlawful practices alleged herein.

E. Pursuant to Iowa Code § 714.16 (7), enter judgment against Defendants, jointly and severally, for a civil penalty of up to \$40,000.00 for each separate violation of the Consumer Fraud Act.

F. Pursuant to Iowa Code § 714.16A, enter judgment against Defendants, jointly and severally, for an additional civil penalty not to exceed \$5,000.00 for each violation of the Consumer Fraud Act committed against an older person.

G. Award Plaintiff interest as permitted by law.

H. Pursuant to Iowa Code § 714.16 (11), enter judgment against Defendants, jointly and

severally, for attorney fees, state's costs and court costs.

I. Grant such additional relief as the Court deems just and equitable.

Respectfully submitted,

Thomas J. Miller
Attorney General of Iowa

A handwritten signature in black ink, appearing to read 'S. St. Clair', written over a horizontal line.

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